

In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Savannah Division

In the matter of:

ALLEN T. BLAIR  
KELLI M. BLAIR  
(Chapter 7 Case 99-43096)

*Debtors*

ROBERT BLAKEWOOD

*Plaintiff*

v.

ALLEN T. BLAIR  
KELLI M. BLAIR

*Defendants*

Adversary Proceeding

Number 00-4007

U.S. BANKRUPTCY COURT  
SAVANNAH, GA.

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FILED

MEMORANDUM AND ORDER

In this action, Robert Blakewood, the creditor in this case, seeks a determination that (a) the judgment debt he holds against Debtors in the amount of \$1,793.33 is nondischargeable and (b) his recorded judgment lien against the Debtors' real estate may not be avoided. Following trial on August 31, 2000, I make the following Findings of Fact and Conclusions of Law.

## FINDINGS OF FACT

At the time Debtors filed their Chapter 7 bankruptcy, they owned a home in the Village Green subdivision in Chatham County, Georgia. The home was purchased in July 1999 for a purchase price of \$92,000.00. The Chatham County tax assessors have appraised the property at a value of \$79,000.00. Mr. Blakewood holds a judgment which was entered on September 22, 1999, in the amount of \$1,793.33 (Exhibit P-1). It was stipulated that that judgment was filed of record in the Office of the Clerk of Superior Court and the judgment lien attached to the Debtors' real estate as of that date. A payment was made in partial satisfaction of the judgment in the amount of \$351.72, thus the remaining balance is \$1,441.61.

Debtors' interest in the real estate is subject to a mortgage which the Debtors assumed with a current balance of \$55,428.00 and two purchase money mortgages held by the sellers in the amount of approximately \$26,000.00. Debtors contend, notwithstanding the fact they paid \$92,000.00 for the home, that they paid too much for the home in part as a result of inexperience and in part because their credit was bad. Sellers offered them owner financing coupled with the assumption of a nonqualifying fully assumable first mortgage loan. Because of these concessions by the sellers, the Debtors contend that they paid more than the property was worth simply in order to be able to purchase the home which they otherwise could not have qualified for.

Mr. Blakewood, a real estate appraiser, did no specific indepth appraisal

of this property, but testified that comparable sales in the Village Green subdivision show sales with a median value of \$85,050.00. He also examined the Chatham County real estate appraisal and contended that it was too low because the appraisers assessed the home based on the assumption that it was frame construction whereas the home is brick veneer in construction. Homes in Village Green subdivision are relatively uniform in size and appearance, but Blakewood also contends that this home is worth more than the median value of homes in the area because it was a "Parade of Homes" model home some years ago and as a result the builder included certain extras in the construction which was not typical in the area. Debtors contend that they have roof and wiring problems which would diminish the value of the home.

Balancing those competing factors, I conclude that the home is worth the median value of homes in the neighborhood according to comparable sales, or \$85,050.00, and that the debt is \$81,428.00.

Based on the evidence, I find that there is approximately \$3,622.00 equity in said residence. Mr. Blakewood asserts that his judgment lien with a net balance of \$1,441.61 has attached to the real estate and, under the authority of the Supreme Court decision of Dewsnup v. Timm, 502 U.S. 410, 112 S.Ct. 773, 116 L.Ed.2d 903 (1992), cannot be stripped and disallowed. Debtors contend that under 11 U.S.C. §522 the judgment lien can be avoided to the extent that it impairs their exemption of approximately \$3,622.00.

## CONCLUSION

Having reviewed the Dewsnup decision I conclude that it is inapplicable to the case before me. On its facts, Dewsnup only applied so as to protect the interest of a consensual lienholder under section 506(d). Dewsnup v. Timm, 502 U.S. at 416-17. The Supreme Court noted that such a consensual mortgage lien had been bargained for between the parties. Id. The Supreme Court expressly limited its holding to the specific facts before it, and thus, because Mr. Blakewood's lien is a judgment lien and therefore nonconsensual, it is not protected by the safe harbor holding of Dewsnup.

Section 522(f) of the Bankruptcy Code grants debtors the ability to avoid a judicial lien to the extent that the lien impairs an exemption. 11 U.S.C. §522(f)(1). Mr. Blakewood's judgment lien falls within the definition of "judicial lien" under 11 U.S.C. Section 101(36)<sup>1</sup>. However, Mr. Blakewood argues that his judicial lien should attach to Debtors' equity in the property prior to Debtors' claim of an exemption in the property. The 1994 Amendment to section 522(f) of the Bankruptcy Code clarified the situation where judicial liens may be avoided and set forth a specific formula to determine whether a judicial lien impairs an exemption. 11 U.S.C. §522(f)(2)(A).<sup>2</sup> Therefore, under Section

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<sup>1</sup>11 U.S.C. Section 101(36) provides:

(36) "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

<sup>2</sup> 11 U.S.C. Section 522(f)(2)(A) provides:

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of -

- (i) the lien;
- (ii) all other liens on the property; and
- (iii) the amount of the exemption that the debtor could claim if there were no

522(f)(2)(A), "judicial liens may be avoided in their entirety if they do not attach to value in excess of the total of prior consensual liens and exemption claims." In re Thomsen, 181 B.R 1013, 1016 (Bankr. M.D. Ga. 1995). "In other words, if the presence of a judicial lien prevents a debtor from being able to take an exemption that he would otherwise be able to claim in its absence, then the lien impairs the debtor's exemption and is subject to avoidance under section 522(f)." Hunter v. Dean Witter Financial Services, Inc. (In re Hunter), Chapter 7 Case No. 92-41510-LWD, slip op. at 10 (Bankr. S.D.Ga. Oct. 31, 1994).

That being the case, it is a relatively straight forward analysis to determine the outcome. I have concluded that the Debtors have equity of \$3,622.00 in this property. The judgment lien has a net balance of \$1,441.61 which impairs that equity. Because the amount of equity exceeds the amount of the lien, the full amount of the lien impairs debtors' exemptible interest. Accordingly, the judgment lien is avoidable in full under 11 U.S.C. § 522 assuming Debtors have claimed an exemption in the property.

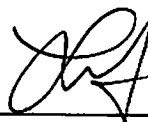
At the time of filing the chapter 7 petition, Debtors' Schedule C, Property Claimed as Exempt, did not claim an exemption in the property, apparently based on their belief that there was no equity in the property. So long as the case is pending Debtors are free to amend their claims of exemption. The Court's finding that there is equity in the property after a trial in this matter should not disadvantage the Debtors. Accordingly, the

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liens on the property;  
exceeds the value that the debtor's interest in the property would have in the absence of  
any liens.

Court will grant Debtors thirty (30) days from the entry of this order to file an amendment to Schedule C to claim an exemption in this property.

Accordingly, it is hereby ORDERED that Debtors have thirty (30) days from the date of this Order to amend Schedule C in order to claim an exemption in this property. Provided Debtors file the appropriate amendment, the Court finds that Mr. Blakewood's judgment lien shall be avoided. Debtors' counsel may submit an appropriate order to that effect at any time after the exemption claim is made.



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 17<sup>th</sup> day of January, 2001